UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

United States of America	)	CR. NO.: 3:02-548-CMC
	)	
v.	)	
	)	**OPINION and ORDER**
David Keith Miles,	)	
	)	
Defendant,	)	
_____	)	

Defendant has filed a motion for relief pursuant to 28 U.S.C. § 2255 alleging three grounds

for relief. The Government has moved for summary judgment, and Defendant has responded in

opposition. For the reasons set forth below, the court **grants** the Government's motion for summary

judgment and dismisses this petition with prejudice.

BACKGROUND

In July 2002, Defendant, together with thirty-two (32) codefendants, was indicted by a

federal grand jury for participating in a conspiracy to distribute 5 kilograms or more of cocaine, and

50 grams or more of "crack" cocaine, in violation of 21 U.S.C. § 841(a)(1) and 846.[1]

Defendant proceeded to trial in March 2003, and was found guilty on May 2, 2003. On

February 4, 2004, Defendant was sentenced to life in prison and a term of supervised release of ten

years.

Defendant appealed his conviction and sentence. In a consolidated appeal, the Fourth Circuit

Court of Appeals determined that error committed by this court under *Booker v. United States*, 543

U.S. 220 (2005), was not harmless, and vacated Defendant's sentence and remanded to this court

_____

[1]The original indictment was superseded three times to add defendants and charges relating
to other defendants. However, the charges against Defendant Miles did not change.

for resentencing.

On July 23, 2008, Defendant appeared for resentencing. After due consideration of the Sentencing Guidelines and other factors under 18 U.S.C. § 3553, Defendant was sentenced to 360 months' imprisonment. Defendant thereafter appealed, and on April 24, 2009, the Fourth Circuit affirmed Defendant's sentence. *United States v. Miles*, 323 Fed. Appx. 240 (4th Cir. 2009).

Defendant thereafter filed this motion for relief.[2] Defendant asserts three grounds for relief: prosecutorial misconduct, abuse of discretion by this court, and ineffective assistance of counsel.

The court has reviewed the complete record in this case. For the reasons stated in the Government's response, which this court finds to be correct and adopts as its findings, the court grants the Government's motion for summary judgment as to all of Defendant's claims for relief.

Defendant's response to the Government's motion for summary judgment consists of a lengthy recitation of case law, yet offers no substantive argument as to any error in the Government's response.

CONCLUSION

For the reasons noted above, the Government's motion for summary judgment is granted and this motion is dismissed with prejudice.

CERTIFICATE OF APPEALABILITY

The governing law provides that:

(c)(2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.

---

[2]Defendant's motion is dated June 29, 2010. However, the mailing envelope is postmarked July 19, 2010. It was received for filing by the Clerk on July 20, 2010. Under either the date of the motion or the mailing date, the motion is timely filed pursuant to the "mailbox rule" dictated by *Houston v. Lack*, 487 U.S. 266 (1988).

(c)(3) The certificate of appealability . . . shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c). A prisoner satisfies this standard by demonstrating that reasonable jurists would find this court's assessment of his constitutional claims is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. *See Miller-El v. Cockrell,* 537 U.S. 322, 336 (2003); *Slack v. McDaniel,* 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In this case, the legal standard for the issuance of a certificate of appealability has not been met. Therefore, a certificate of appealability is **denied**.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON McGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
November 5, 2010